



CITY OF LINCOLN NEBRASKA

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December 18, 2003

Special Permit 2002 – Application of Quin-C (Fast Break, Inc.) to sell alcoholic beverages off the premises at 4801 Randolph St.

Dear City Council Chairperson and Members:

I hereby veto Bill No. 03-334 (Resolution A-82516) passed by the City Council on December 15, 2003 regarding the application of Quin-C (Fast Break, Inc.) to sell alcoholic beverages off the premises at 4801 Randolph St.

The description of the property indicates that the licensed premise proposed is adjacent to a residential use 44' to the south and 94' to the east. In addition, the residential district to the south abuts the premises and the lots on the south are abutting with their back yards adjoining the premises. As a result, the application contains proposed mitigation and operates as a request to waive the distance requirement under the provisions of Lincoln Municipal Code (LMC) § 27.63.685. The ordinance in question requires approved mitigation and this application includes a staff recommendation to approve the proposed mitigation. However, the Planning Commission recommended denial based on a lack of changed circumstances. The fact sheet reports that a previous application for off-sale at this location was denied by the Planning Commission on May 1, 2002, approved by the City Council on June 3, 2002, and vetoed by Mayor Don Wesely on June 5, 2002.

The zoning restrictions for the retail sale of alcohol near residential districts in the city have existed since 1994. The grant of a special use permit to sell alcohol at retail in these zones is subject to the condition that the licensed premises be located no closer than 100 feet from a residential district or residential use.

The ordinance always has contained the ability to provide mitigation related to the concerns of the ordinance: noise, light, trespass, and other secondary affects of retail alcohol sales. The City has consistently measured the 100 feet from exterior lot lines and building of the retail premise. In May 2001, the state liquor commission by court decision was required to consider Lincoln's zoning special permit restrictions. Since that time, the City has been consistent in requiring approved mitigation and has denied several applicants that offered mitigation.

Some critics might observe that the ordinance allows for mitigation, and since staff recommended approval of mitigation in this case, the request should be automatically granted. The special permit process is not automatic because the mitigation must be approved by the elected officials. The ordinance intentionally brings these decisions directly to elected leaders through a public process.

The history of the ordinance has evolved through controversial steps. Mitigation was a compromise that worked on a going forward basis, to continue to allow the public process to consider proposed mitigation and produce acceptable results. In 1994, the decision was made to allow owners to approach mitigation in a flexible open-ended manner. The City has considered several efforts to create a mitigation check-list, but in

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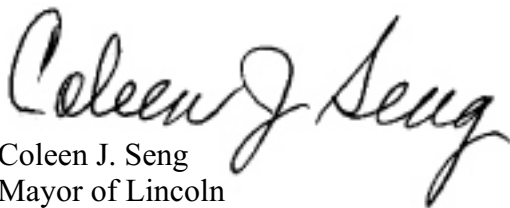
the end, the open-ended process remained. This underscores the need for the public process. There are instances where zoning conditions are approved without the process used here. If my decision was based solely on the background and reputation for good management of the applicant, it would be an easy approval. However, those credentials must be tempered by the possibility that the property might be sold. Similarly, neighbor concerns about the number of retail alcohol licenses were not part of my decision, as they do not directly impact the land use at this site.

The proposed mitigation in this case includes many conditions that are similar to those denied in the past. In recommending approval, the planning staff report indicates the sale of alcohol for consumption of the premises is an accessory use in this instance, and would not significantly increase the impact of this use upon the neighborhood.

While I can support some creative efforts to find mitigation, I do not support interpreting the zoning restrictions to include this concept of accessory use as it would apply to all but a few "beer/liquor only" establishments. If this were the case, the City would be telling neighbors that concerns about traffic, light, noise and other secondary affects of retail alcohol sales are mitigated by a subjective standard that depends more on the ownership and management of the facility, rather than on the use itself. Worse, this is directly in opposition to the recommendation of the planning commission, and the previous determination of the city regarding essentially the same mitigation at the same location in 2002.

Since the ordinance is based on the concerns of locating alcohol sales in proximity to residences and has enjoyed long support, there appears to be little reason to abandon those concerns. There is a simple policy choice to make at this time. If the staff and applicant here demonstrate that this is the only workable mitigation, and I find that the mitigation is not supported, then we must admit the process and good faith effort of seeking proposed mitigation through this public process has not produced acceptable results. The solution is not to "hold our nose" and approve mitigation we know does not correlate to the concerns of the ordinance, it is to amend the ordinance to eliminate the ability to provide mitigation. Therefore, I am instructing the City Law Department to prepare an amendment to the ordinance to eliminate the mitigation option and enforce the 100 foot minimum distance.

For the above and foregoing reasons. I hereby Veto Special Permit 2002 (Bill No. 03-334/Resolution A-82516)

A handwritten signature in black ink, reading "Coleen J. Seng". The signature is fluid and cursive, with the first name "Coleen" being more prominent and the last name "Seng" following in a similar style.

Coleen J. Seng
Mayor of Lincoln